

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

D & S Spraying Service  
R. R. 1, Box 55  
Almena, Kansas 67622

Respondent

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Docket No. FIFRA-07-2003-0272

CONSENT AGREEMENT AND  
FINAL ORDER

**PRELIMINARY STATEMENT**

This proceeding for the assessment of civil penalties was initiated on or about August 11, 2003, pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter called FIFRA), 7 U.S.C. §136j, when the United States Environmental Protection Agency (hereinafter referred to as "Complainant") issued a "Complaint and Notice of Opportunity for Hearing" to D & S Spraying Service (hereinafter referred to as "Respondent").

The Complaint charged Respondent with one count of violating Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j (a)(2)(L) and Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), which requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which he is currently producing, which he produced during the past year, and which he has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as

the Administrator may prescribe. The regulation found at 40 C.F.R. § 167.85(d) requires such pesticide reports to be filed annually on or before the first of March.

Subsequently, Complainant and Respondent entered into negotiations in an attempt to arrive at an amicable resolution of this matter. This Consent Agreement and Final Order set forth herein below is the result of these negotiations and represents settlement of this Complaint.

### **CONSENT AGREEMENT**

It is hereby agreed, and accepted by Respondent, that:

1. This Consent Agreement is being entered into by the Parties in full settlement of, and release from all FIFRA civil penalties that might have attached as a result of the allegations in the Complaint. Respondent has read the Consent Agreement, finds it reasonable and consents to its issuance and its terms and explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

2. Respondent admits the jurisdictional allegations of the Complaint and admits the facts set forth therein.

3. Respondent neither admits nor denies the violations of Section 12(a)(2)(L) of the FIFRA, 7 U.S.C. § 136j (a)(2)(L) and Section 7(c) of FIFRA, 7 U.S.C. § 136e(c) as set forth in the Complaint and neither admits nor denies that such violations are violations of Section 14 of FIFRA, 7 U.S.C. § 136l.

4. Respondent certifies by signing this Consent Agreement and Final Order that it is presently in compliance with FIFRA, 7 U.S.C. 136 et seq., and all regulations promulgated

thereunder.

5. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency.

6. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

7. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

8. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the completion of required documentation in mitigation of the civil penalty as specified in paragraph "2" of this Final Order.

#### **FINAL ORDER**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:

1. Respondent shall remain in compliance with FIFRA and all regulations promulgated thereunder.


2. Respondent, in settlement of the allegations set forth in the Complaint shall not be assessed a civil penalty. Respondent's establishment number will be terminated at Respondent's request.

3. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

4. This executed Consent Agreement and Final Order shall be filed with the  
Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas  
City, Kansas, 66101.

COMPLAINANT:

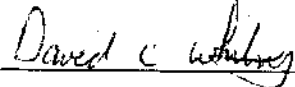
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By:   
Kent Johnson  
Attorney  
Office of Regional Counsel

Date: 9/23/03


RESPONDENT:

D & S SPRAYING SERVICE

By:   
Title: President & owner

Date: 9-11-03

IT IS SO ORDERED. This Order shall become effective immediately.

  
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII

Date: September 24, 2003

IN THE MATTER OF D&S Spraying Service, Respondent  
Docket No. FIFRA-07-2003-0272

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

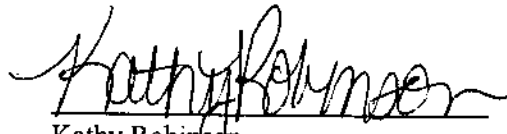
Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

David C. Whitney  
Registered Agent  
D&S Spraying Service  
RR1, Box 55  
Almena, Kansas 67622

Dated: 10/1/03

  
Kathy Robinson  
Regional Hearing Clerk